



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF APPEALS & OPINIONS

January 31, 2023

Clerk of the Court
U.S. District Court for
the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Kutner v. County of Nassau*, No. 22-cv-7530 (JMA) (ARL)

Dear Clerk:

Plaintiff has notified this Office under Rule 5.1 of the Federal Rules of Civil Procedure of a constitutional challenge to New York State Penal Law § 400.00. I write to advise you that, after careful consideration and review of the documents filed in connection with this matter, the Office of the Attorney General has determined that it will not intervene pursuant to 28 U.S.C. § 2403(b) at this time.

Because there are many reasons why this Office elects not to intervene in a matter, we respectfully request that no inference adverse to the State be drawn from our decision. We always reserve the option to intervene for purposes of defending the constitutionality of any New York state statute or regulation at a later stage of the litigation, during which stage applicable court rules may require further notice to the Office of the Attorney General.

To facilitate our continued monitoring of challenges to the constitutionality of New York state statutes or regulations, we request that the parties notify us of the Court's decision to the extent it addresses those issues. Please do not hesitate to call me at (212) 416-6279 should the Court have any questions.

Respectfully yours,
/s/ Ester Murdukhayeva
Ester Murdukhayeva
Deputy Solicitor General

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